MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2015/2016

UPS2612 – EVIDENCE AND PROCEDURE IN SYARIAH COURTS

(All Sections / Groups)

10 OCTOBER 2015
Reading Time : 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. This Question paper consists of THREE (3) pages with FIVE (5) Questions only.

2. Attempt **FOUR** out of FIVE questions ONLY. Question One (1) is **COMPULSORY** to be answered. All questions carry equal marks and the distribution of the marks for each question is given.

3. Students are allowed to bring into Examination Hall copy of:

   i. Syariah Court Evidence (Federal Territories) Act 1997 [Act 561]; and
   ii. Syariah Criminal Procedure (Federal Territories) Act 1997 [Act 560];
   iii. Syariah Criminal Offences (Federal Territories) Act 1997 [Act 559];
   iv. Syariah Court Civil Procedure (Federal Territories) Act 1998 [Act 585]; and
   v. Translation of Al-Quran

4. Please write all your answers in the Answer Booklet provided.

Question 1(COMPULSORY)

The Religious Enforcement Office of Federal Territories received a report concerning a popular spot in Cheras where many Muslim people buy lottery tickets every Wednesday. The Religious Enforcement team went to the premise and arrested Abu, who was buying a lottery ticket.

In the raid, the Religious Enforcement Officers found a lottery ticket in the possession of Abu's right hand. Before they raided the premise, the Religious Enforcement Officers spent an hour spying and identifying individuals who entered into the premise and two of their officers, Siti and Ali, confirmed that Abu had entered the premise and paid for the lottery ticket. The Religious Enforcement Officers also snapped a picture of Abu holding the lottery ticket in front of the premise and took him to the Religious Enforcement Office of Federal Territories for further investigation.

Abu is now charged with the offence of gambling under Section 18(1) of the Syariah Criminal Offences (Federal Territories) Act 1997. The Pendakwa Syarie (Syarie Prosecutor) intends to tender these evidences:

i. Statement of Ahmad, the Religious Enforcement Officer who arrested Abu with the lottery ticket, who is also Abu's cousin;
ii. Statement of Siti and Ali, the two Religious Enforcement Officers, who identified Abu on the scene;
iii. Statement of Ah Wong, the person who sold the lottery ticket to Abu;
iv. Statement of DSP Azri, a gaming expert from the Royal Malaysia Police, who acknowledges that the lottery ticket is a gambling document; and
v. The lottery ticket confiscated from Abu and a picture of him holding the ticket.

Discuss the admissibility and relevancy of all the evidences in the light of Islamic Law of evidence as well as the Syariah Court Evidence (Federal Territories) Act 1997.

(Total 25 marks)

Continued .....

Question 2

Mat had surrendered himself to the Religious Enforcement Office of Federal Territories and admitted for four times in front of Haji Ali and Ustaz Umar that he had committed *zina*, an offence under *hudud*, with Ayu, his officemate. Based on his admission, the Religious Enforcement Officers have arrested Ayu for committing *zina* with Mat. However, Ayu strongly denied the allegation and claimed that Mat was actually suffering from a serious psychological depression after she rejected his marriage proposal a month ago.

1) Examine the admissibility and effect of Mat's confession against himself. Support your answer with authorities from Al-Quran, Sunnah and various juristic views.

(15 marks)

2) What is Ayu's position if Mat is declared a sane person by the Syariah court?

(10 marks)

(Total 25 marks)

Question 3

Ibn 'Abbas narrated that the Messenger of Allah (PBUH) said:

"Were people to be given according to their claims, some would claim the wealth and blood of others. But the burden of proof is upon the claimant and the taking of an oath is upon the one who denies (the allegation)."

1) Explain the above *hadith* in the light of an oath (*yamin*) taken by the plaintiff.

(15 marks)

2) Illustrate the concept of *bayyinah* and the difference between *bayyinah* and *shahadah*. Support your answer with various juristic views and relevant authorities.

(10 marks)

(Total 25 marks)

Continued .....

Question 4

1) Rahman was arrested and charged for consuming intoxicating drink, an offence punishable under section 19(1) of the Syariah Criminal Offences (Federal Territories) Act 1997. He denies any allegation and refused to plead guilty to the charge.

   Explain the procedure on how the Syariah court should try his case until the case disposes.

   (15 marks)

2) Elaborate the position, jurisdiction and dilemma of Syariah courts in Malaysia prior to the amendment of Federal Constitution in 1988. Support your answer with relevant cases.

   (10 marks)

(Total 25 marks)

Question 5

1) Section 120(1) of the Syariah Court Civil Procedure (Federal Territories) Act 1998 provides that:

   "...every party shall be present at the hearing except as otherwise allowed by the Court."

   Based on the above, determine circumstances under which a trial in the absence of the defendant would be allowed by the Syariah Court. Support your answer with relevant authorities and decided cases.

   (15 marks)

2) Briefly explain the legality of *sulh* and its practices under Syariah Court Civil Procedure (Federal Territories) Act 1998

   (10 marks)

(Total 25 Marks)

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